



PATENT

**UNITED STATES PATENT AND TRADEMARK OFFICE**

In re: Gust H. Bardy et al. Confirmation No.: 3720  
Serial No.: 10/013,980 Examiner: K. Schaetzle  
Filing Date: November 5, 2001 Group Art Unit: 3762  
Docket No.: 1201.1135101 Customer No.: 21691  
For: SUBCUTANEOUS ELECTRODE WITH IMPROVED CONTACT SHAPE  
FOR TRANSTHORACIC CONDUCTION

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PETITION TO CLAIM BENEFIT UNDER 35 U.S.C. § 120 OF A  
PRIOR COPENDING NONPROVISIONAL APPLICATION**

**CERTIFICATE UNDER 37 C.F.R. 1.10:** The undersigned hereby certified that this paper or papers, as described herein are being deposited in the United States Postal Service, "Express Mail Post Office to Addressee" having an Express Mail mailing label number of: EV 314495239 US, in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24th day of September 2004.

By Kathleen L. Boekley  
Kathleen L. Boekley

Dear Sir:

Pursuant to 37 C.F.R. § 1.78(a)(3), Applicants hereby petition to claim the benefit, for this application under 35 U.S.C. § 120, of prior copending nonprovisional U.S. Application No. 09/941,814, filed August 27, 2001.

Applicants state that the entire delay between the date the claim for the benefit of the earlier application was due under 37 C.F.R. § 1.78(a)(2)(ii) and the date this claim is filed was unintentional. Attorney representation for Applicants changed in December of 2003, subsequently effecting full review of the patent application file, including the matter of the non-

perfected priority claim. Accordingly, upon notification by Attorney representation of a non-perfected priority claim, Applicants so petition.

In compliance with 37 C.F.R. 1.78(a)(2)(iii), an amendment is filed concurrent with this Petition. Applicants point out that the incorporation by reference statement was included in the specification as filed, and the incorporated patent applications were sufficiently well identified to distinguish them from all others. As such, no new matter has been added the amendment. (See In re Fouche, 439 F.2d 1237; 169 U.S.P.Q. (BNA) 429 (CCPA 1971).)

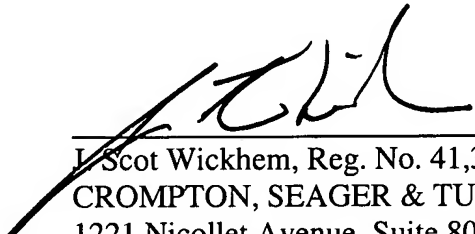
The fee set forth in 37 CFR § 1.17(t) of \$1,330 is enclosed. Please charge any deficiencies or credit any overpayment to Deposit Account No. 50-0413.

Respectfully submitted,

Gust H. Bardy et al.

By their Attorney,

Date: September 24, 2004



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